

releasing the devices to any person who received the original detention order or that person's representative and will remove, or authorize in writing the removal of, the required labels or tags.

(k) *Recordkeeping requirements.* (1) After issuance of a detention order under paragraph (d) of this section, the owner, operator, or agent in charge of any factory, warehouse, other establishment, or consulting laboratory where detained devices are manufactured, processed, packed, or held shall have, or establish, and maintain adequate records relating to how the detained devices may have become adulterated or misbranded, records on any distribution of the devices before and after the detention period, records on the correlation of any in-process detained devices that are put in final form under paragraph (h) of this section to the completed devices, records of any changes in, or processing of, the devices permitted under the detention order, and records of any other movement under paragraph (h) of this section. Records required under this paragraph shall be provided to the FDA on request for review and copying. Any FDA request for access to records required under this paragraph shall be made at a reasonable time, shall state the reason or purpose for the request, and shall identify to the fullest extent practicable the information or type of information sought in the records to which access is requested.

(2) Records required under this paragraph shall be maintained for a maximum period of 2 years after the issuance of the detention order or for such other shorter period as FDA directs. When FDA terminates the detention or when the detention period expires, whichever occurs first, FDA will advise all persons required under this paragraph to keep records concerning that detention whether further recordkeeping is required for the remainder of the 2-year, or shorter, period. FDA ordinarily will not require further recordkeeping if the agency determines that the devices are not adulterated or misbranded or that recordkeeping is not necessary to protect the public health, unless the records are required

under other regulations in this chapter (e.g., the good manufacturing practice regulation in part 820 of this chapter).

[44 FR 13239, Mar. 9, 1979, as amended at 49 FR 3174, Jan. 26, 1984]

PART 801—LABELING

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Subpart A—General Labeling Provisions

§ 801.1 Medical devices; name and place of business of manufacturer, packer or distributor.

(a) The label of a device in package form shall specify conspicuously the name and place of business of the manufacturer, packer, or distributor.

(b) The requirement for declaration of the name of the manufacturer, packer, or distributor shall be deemed to be satisfied, in the case of a corporation, only by the actual corporate name which may be preceded or followed by the name of the particular division of the corporation. Abbreviations for “Company,” “Incorporated,” etc., may be used and “The” may be omitted. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(c) Where a device is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such device; such as, “Manufactured for _____”, “Distributed by _____”, or

any other wording that expresses the facts.

(d) The statement of the place of business shall include the street address, city, State, and Zip Code; however, the street address may be omitted if it is shown in a current city directory or telephone directory. The requirement for inclusion of the ZIP Code shall apply only to consumer commodity labels developed or revised after the effective date of this section. In the case of nonconsumer packages, the ZIP Code shall appear on either the label or the labeling (including the invoice).

(e) If a person manufactures, packs, or distributes a device at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where such device was manufactured or packed or is to be distributed, unless such statement would be misleading.

§ 801.4 Meaning of “intended uses.”

The words *intended uses* or words of similar import in §§ 801.5, 801.119, and 801.122 refer to the objective intent of the persons legally responsible for the labeling of devices. The intent is determined by such persons’ expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It may be shown by the circumstances that the article is, with the knowledge of such persons or their representatives, offered and used for a purpose for which it is neither labeled nor advertised. The intended uses of an article may change after it has been introduced into interstate commerce by its manufacturer. If, for example, a packer, distributor, or seller intends an article for different uses than those intended by the person from whom he received the devices, such packer, distributor, or seller is required to supply adequate labeling in accordance with the new intended uses. But if a manufacturer knows, or has knowledge of facts that would give him notice that a device introduced into interstate commerce by him is to be used for conditions, purposes, or uses

other than the ones for which he offers it, he is required to provide adequate labeling for such a device which accords with such other uses to which the article is to be put.

§801.5 Medical devices; adequate directions for use.

Adequate directions for use means directions under which the layman can use a device safely and for the purposes for which it is intended. Section 801.4 defines *intended use*. Directions for use may be inadequate because, among other reasons, of omission, in whole or in part, or incorrect specification of:

(a) Statements of all conditions, purposes, or uses for which such device is intended, including conditions, purposes, or uses for which it is prescribed, recommended, or suggested in its oral, written, printed, or graphic advertising, and conditions, purposes, or uses for which the device is commonly used; except that such statements shall not refer to conditions, uses, or purposes for which the device can be safely used only under the supervision of a practitioner licensed by law and for which it is advertised solely to such practitioner.

(b) Quantity of dose, including usual quantities for each of the uses for which it is intended and usual quantities for persons of different ages and different physical conditions.

(c) Frequency of administration or application.

(d) Duration of administration or application.

(e) Time of administration or application, in relation to time of meals, time of onset of symptoms, or other time factors.

(f) Route or method of administration or application.

(g) Preparation for use, i.e., adjustment of temperature, or other manipulation or process.

§801.6 Medical devices; misleading statements.

Among representations in the labeling of a device which render such device misbranded is a false or misleading representation with respect to another device or a drug or food or cosmetic.

§801.15 Medical devices; prominence of required label statements.

(a) A word, statement, or other information required by or under authority of the act to appear on the label may lack that prominence and conspicuousness required by section 502(c) of the act by reason, among other reasons, of:

(1) The failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(2) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(3) The failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(4) Insufficiency of label space for the prominent placing of such word, statement, or information, resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(5) Insufficiency of label space for the placing of such word, statement, or information, resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design or device; or

(6) Smallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

(b) No exemption depending on insufficiency of label space, as prescribed in regulations promulgated under section 502(b) of the act, shall apply if such insufficiency is caused by:

(1) The use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(2) The use of label space to give greater conspicuousness to any word,

statement, or other information than is required by section 502(c) of the act; or

(3) The use of label space for any representation in a foreign language.

(c)(1) All words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language: *Provided, however,* That in the case of articles distributed solely in the Commonwealth of Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be substituted for English.

(2) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in the foreign language.

(3) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear on the labeling in the foreign language.

§ 801.16 Medical devices; Spanish-language version of certain required statements.

If devices restricted to prescription use only are labeled solely in Spanish for distribution in the Commonwealth of Puerto Rico where Spanish is the predominant language, such labeling is authorized under § 801.15(c).

Subpart B [Reserved]

Subpart C—Labeling Requirements for Over-the-Counter Devices

§ 801.60 Principal display panel.

The term *principal display panel*, as it applies to over-the-counter devices in package form and as used in this part, means the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale. The principal display panel shall be large enough to accommodate all the mandatory label information required to be placed thereon by this part with clarity and conspicuousness and with-

out obscuring designs, vignettes, or crowding. Where packages bear alternate principal display panels, information required to be placed on the principal display panel shall be duplicated on each principal display panel. For the purpose of obtaining uniform type size in declaring the quantity of contents for all packages of substantially the same size, the term *area of the principal display panel* means the area of the side or surface that bears the principal display panel, which area shall be:

(a) In the case of a rectangular package where one entire side properly can be considered to be the principal display panel side, the product of the height times the width of that side;

(b) In the case of a cylindrical or nearly cylindrical container, 40 percent of the product of the height of the container times the circumference; and

(c) In the case of any other shape of container, 40 percent of the total surface of the container: *Provided, however,* That where such container presents an obvious "principal display panel" such as the top of a triangular or circular package, the area shall consist of the entire top surface.

In determining the area of the principal display panel, exclude tops, bottoms, flanges at the tops and bottoms of cans, and shoulders and necks of bottles or jars. In the case of cylindrical or nearly cylindrical containers, information required by this part to appear on the principal display panel shall appear within that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

§ 801.61 Statement of identity.

(a) The principal display panel of an over-the-counter device in package form shall bear as one of its principal features a statement of the identity of the commodity.

(b) Such statement of identity shall be in terms of the common name of the device followed by an accurate statement of the principal intended action(s) of the device. Such statement shall be placed in direct conjunction with the most prominent display of the

name and shall employ terms descriptive of the principal intended action(s). The indications for use shall be included in the directions for use of the device, as required by section 502(f)(1) of the act and by the regulations in this part.

(c) The statement of identity shall be presented in bold face type on the principal display panel, shall be in a size reasonably related to the most prominent printed matter on such panel, and shall be in lines generally parallel to the base on which the package rests as it is designed to be displayed.

§ 801.62 Declaration of net quantity of contents.

(a) The label of an over-the-counter device in package form shall bear a declaration of the net quantity of contents. This shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight, measure, or size: *Provided, That:*

(1) In the case of a firmly established general consumer usage and trade custom of declaring the quantity of a device in terms of linear measure or measure of area, such respective term may be used. Such term shall be augmented when necessary for accuracy of information by a statement of the weight, measure, or size of the individual units or of the entire device.

(2) If the declaration of contents for a device by numerical count does not give accurate information as to the quantity of the device in the package, it shall be augmented by such statement of weight, measure, or size of the individual units or of the total weight, measure, or size of the device as will give such information; for example, "100 tongue depressors, adult size", "1 rectal syringe, adult size", etc. Whenever the Commissioner determines for a specific packaged device that an existing practice of declaring net quantity of contents by weight, measure, numerical count, or a combination of these does not facilitate value comparisons by consumers, he shall by regulation designate the appropriate term or terms to be used for such article.

(b) Statements of weight of the contents shall be expressed in terms of avoirdupois

pound and ounce. A statement of liquid measure of the contents shall be expressed in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid-ounce subdivisions thereof, and shall express the volume at 68 °F (20 °C). See also paragraph (p) of this section.

(c) The declaration may contain common or decimal fractions. A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds; except that if there exists a firmly established, general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than two places. A statement that includes small fractions of an ounce shall be deemed to permit smaller variations than one which does not include such fractions.

(d) The declaration shall be located on the principal display panel of the label, and with respect to packages bearing alternate principal panels it shall be duplicated on each principal display panel.

(e) The declaration shall appear as a distinct item on the principal display panel, shall be separated, by at least a space equal to the height of the lettering used in the declaration, from other printed label information appearing above or below the declaration and, by at least a space equal to twice the width of the letter "N" of the style of type used in the quantity of contents statement, from other printed label information appearing to the left or right of the declaration. It shall not include any term qualifying a unit of weight, measure, or count, such as "giant pint" and "full quart", that tends to exaggerate. It shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package rests as it is designed to be displayed: *Provided, That:*

(1) On packages having a principal display panel of 5 square inches or less the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the

declaration of net quantity of contents meets the other requirements of this part; and

(2) In the case of a device that is marketed with both outer and inner retail containers bearing the mandatory label information required by this part and the inner container is not intended to be sold separately, the net quantity of contents placement requirement of this section applicable to such inner container is waived.

(3) The principal display panel of a device marketed on a display card to which the immediate container is affixed may be considered to be the display panel of the card, and the type size of the net quantity of contents statement is governed by the dimensions of the display card.

(f) The declaration shall accurately reveal the quantity of device in the package exclusive of wrappers and other material packed therewith.

(g) The declaration shall appear in conspicuous and easily legible boldface print or type in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package; except that a declaration of net quantity blown, embossed, or molded on a glass or plastic surface is permissible when all label information is so formed on the surface. Requirements of conspicuousness and legibility shall include the specifications that:

(1) The ratio of height to width of the letter shall not exceed a differential of 3 units to 1 unit, i.e., no more than 3 times as high as it is wide.

(2) Letter heights pertain to upper case or capital letters. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent that shall meet the minimum standards.

(3) When fractions are used, each component numeral shall meet one-half the minimum height standards.

(h) The declaration shall be in letters and numerals in a type size established in relationship to the area of the principal display panel of the package and shall be uniform for all packages of substantially the same size by complying with the following type specifications:

(1) Not less than one-sixteenth inch in height on packages the principal display

panel of which has an area of 5 square inches or less.

(2) Not less than one-eighth inch in height on packages the principal display panel of which has an area of more than 5 but not more than 25 square inches.

(3) Not less than three-sixteenths inch in height on packages the principal display panel of which has an area of more than 25 but not more than 100 square inches.

(4) Not less than one-fourth inch in height on packages the principal display panel of which has an area of more than 100 square inches, except not less than one-half inch in height if the area is more than 400 square inches.

Where the declaration is blown, embossed, or molded on a glass or plastic surface rather than by printing, typing, or coloring, the lettering sizes specified in paragraphs (h)(1) through (4) of this section shall be increased by one-sixteenth of an inch.

(i) On packages containing less than 4 pounds or 1 gallon and labeled in terms of weight or fluid measure:

(1) The declaration shall be expressed both in ounces, with identification by weight or by liquid measure and, if applicable (1 pound or 1 pint or more) followed in parentheses by a declaration in pounds for weight units, with any remainder in terms of ounces or common or decimal fractions of the pound (see examples set forth in paragraphs (k) (1) and (2) of this section), or in the case of liquid measure, in the largest whole units (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart (see examples set forth in paragraphs (k) (3) and (4) of this section). If the net weight of the package is less than 1 ounce avoirdupois or the net fluid measure is less than 1 fluid ounce, the declaration shall be in terms of common or decimal fractions of the respective ounce and not in terms of drams.

(2) The declaration may appear in more than one line. The term "net weight" shall be used when stating the net quantity of contents in terms of weight. Use of the terms "net" or "net contents" in terms of fluid measure or

numerical count is optional. It is sufficient to distinguish avoirdupois ounce from fluid ounce through association of terms; for example, "Net wt. 6 oz" or "6 oz net wt.," and "6 fl oz" or "net contents 6 fl oz."

(j) On packages containing 4 pounds or 1 gallon or more and labeled in terms of weight or fluid measure, the declaration shall be expressed in pounds for weight units with any remainder in terms of ounces or common or decimal fractions of the pound; in the case of fluid measure, it shall be expressed in the largest whole unit, i.e., gallons, followed by common or decimal fractions of a gallon or by the next smaller whole unit or units (quarts or quarts and pints), with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart; see paragraph (k)(5) of this section.

(k) *Examples:* (1) A declaration of 1½ pounds weight shall be expressed as "net wt. 24 oz (1 lb 8 oz)," or "Net wt. 24 oz (1½ lb)" or "Net wt. 24 oz (1.5 lb)."

(2) A declaration of three-fourths pound avoirdupois weight shall be expressed as "Net wt. 12 oz."

(3) A declaration of 1 quart liquid measure shall be expressed as "Net contents 32 fl oz (1 qt)" or "32 fl oz (1 qt)."

(4) A declaration of 1¾ quarts liquid measure shall be expressed as, "Net contents 56 fl oz (1 qt 1 pt 8 oz)" or "Net contents 56 fl oz (1 qt 1.5 pt)," but not in terms of quart and ounce such as "Net contents 56 fl oz (1 qt 24 oz)."

(5) A declaration of 2½ gallons liquid measure shall be expressed as "Net contents 2 gal 2 qt", "Net contents 2.5 gallons," or "Net contents 2½ gal" but not as "2 gal 4 pt".

(l) For quantities, the following abbreviations and none other may be employed. Periods and plural forms are optional:

gallon gal	liter l
milliliter ml	cubic centimeter cc
quart qt	yard yd
pint pt	feet or foot ft
ounce oz	inch in
pound lb	meter m
grain gr	centimeter cm
kilogram kg	millimeter mm
gram g	fluid fl
milligram mg	square sq
microgram mcg	weight wt

(m) On packages labeled in terms of linear measure, the declaration shall be expressed both in terms of inches and, if applicable (1 foot or more), the largest whole units (yards, yards and feet, feet). The declaration in terms of the largest whole units shall be in parentheses following the declaration in terms of inches and any remainder shall be in terms of inches or common or decimal fractions of the foot or yard; if applicable, as in the case of adhesive tape, the initial declaration in linear inches shall be preceded by a statement of the width. Examples of linear measure are "86 inches (2 yd 1 ft 2 in)", "90 inches (2½ yd)", "30 inches (2.5 ft)", "¾ inch by 36 in (1 yd)", etc.

(n) On packages labeled in terms of area measure, the declaration shall be expressed both in terms of square inches and, if applicable (1 square foot or more), the largest whole square unit (square yards, square yards and square feet, square feet). The declaration in terms of the largest whole units shall be in parentheses following the declaration in terms of square inches and any remainder shall be in terms of square inches or common or decimal fractions of the square foot or square yard; for example, "158 sq inches (1 sq ft 14 sq in)".

(o) Nothing in this section shall prohibit supplemental statements at locations other than the principal display panel(s) describing in nondeceptive terms the net quantity of contents, provided that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the device contained in the package; for example, "giant pint" and "full quart". Dual or combination declarations of net quantity of contents as provided for in paragraphs (a) and (i) of this section are not regarded as supplemental net quantity statements and shall be located on the principal display panel.

(p) A separate statement of net quantity of contents in terms of the metric system of weight or measure is not regarded as a supplemental statement and an accurate statement of the net quantity of contents in terms of the metric system of weight or measure

may also appear on the principal display panel or on other panels.

(q) The declaration of net quantity of contents shall express an accurate statement of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

§ 801.63 Medical devices; warning statements for devices containing or manufactured with chlorofluorocarbons and other class I ozone-depleting substances.

(a) All over-the-counter devices containing or manufactured with chlorofluorocarbons, halons, carbon tetrachloride, methyl chloride, or any other class I substance designated by the Environmental Protection Agency (EPA) shall carry one of the following warnings:

(1) The EPA warning statement:

WARNING: Contains [or Manufactured with, if applicable] *[insert name of substance]*, a substance which harms public health and environment by destroying ozone in the upper atmosphere.

(2) The alternative statement:

NOTE: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or other class I substance, if applicable]:

WARNING: Contains [or Manufactured with, if applicable] *[insert name of substance]*, a substance which harms public health and environment by destroying ozone in the upper atmosphere.

CONSULT WITH YOUR PHYSICIAN, HEALTH PROFESSIONAL, OR SUPPLIER IF YOU HAVE ANY QUESTION ABOUT THE USE OF THIS PRODUCT.

(b) The warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling in accordance with the requirements of 40 CFR part 82 and appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase. This provision does not replace or relieve a person from

any requirements imposed under 40 CFR part 82.

[61 FR 20101, May 3, 1996]

Subpart D—Exemptions From Adequate Directions for Use

§ 801.109 Prescription devices.

A device which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such device, and hence for which “adequate directions for use” cannot be prepared, shall be exempt from section 502(f)(1) of the act if all the following conditions are met:

(a) The device is:

(1)(i) In the possession of a person, or his agents or employees, regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale or retail distribution of such device; or

(ii) In the possession of a practitioner, such as physicians, dentists, and veterinarians, licensed by law to use or order the use of such device; and

(2) Is to be sold only to or on the prescription or other order of such practitioner for use in the course of his professional practice.

(b) The label of the device, other than surgical instruments, bears:

(1) The statement “Caution: Federal law restricts this device to sale by or on the order of a _____”, the blank to be filled with the word “physician”, “dentist”, “veterinarian”, or with the descriptive designation of any other practitioner licensed by the law of the State in which he practices to use or order the use of the device; and

(2) The method of its application or use.

(c) Labeling on or within the package from which the device is to be dispensed bears information for use, including indications, effects, routes, methods, and frequency and duration of administration, and any relevant hazards, contraindications, side effects, and precautions under which practitioners licensed by law to administer the device can use the device safely and for the purpose for which it is intended, including all purposes for

which it is advertised or represented: *Provided, however,* That such information may be omitted from the dispensing package if, but only if, the article is a device for which directions, hazards, warnings, and other information are commonly known to practitioners licensed by law to use the device. Upon written request, stating reasonable grounds therefor, the Commissioner will offer an opinion on a proposal to omit such information from the dispensing package under this proviso.

(d) Any labeling, as defined in section 201(m) of the act, whether or not it is on or within a package from which the device is to be dispensed, distributed by or on behalf of the manufacturer, packer, or distributor of the device, that furnishes or purports to furnish information for use of the device contains adequate information for such use, including indications, effects, routes, methods, and frequency and duration of administration and any relevant hazards, contraindications, side effects, and precautions, under which practitioners licensed by law to employ the device can use the device safely and for the purposes for which it is intended, including all purposes for which it is advertised or represented. This information will not be required on so-called reminder—piece labeling which calls attention to the name of the device but does not include indications or other use information.

(e) All labeling, except labels and cartons, bearing information for use of the device also bears the date of the issuance or the date of the latest revision of such labeling.

§801.110 Retail exemption for prescription devices.

A device subject to §801.109 shall be exempt at the time of delivery to the ultimate purchaser or user from section 502(f)(1) of the act if it is delivered by a licensed practitioner in the course of his professional practice or upon a prescription or other order lawfully issued in the course of his professional practice, with labeling bearing the name and address of such licensed practitioner and the directions for use and

cautionary statements, if any, contained in such order.

§801.116 Medical devices having commonly known directions.

A device shall be exempt from section 502(f)(1) of the act insofar as adequate directions for common uses thereof are known to the ordinary individual.

§801.119 In vitro diagnostic products.

A product intended for use in the diagnosis of disease and which is an in vitro diagnostic product as defined in §809.3(a) of this chapter shall be deemed to be in compliance with the requirements of this section and section 502(f)(1) of the act if it meets the requirements of §809.10 of this chapter.

§801.122 Medical devices for processing, repackaging, or manufacturing.

A device intended for processing, repackaging, or use in the manufacture of another drug or device shall be exempt from section 502(f)(1) of the act if its label bears the statement "Caution: For manufacturing, processing, or repackaging".

§801.125 Medical devices for use in teaching, law enforcement, research, and analysis.

A device subject to §801.109 shall be exempt from section 502(f)(1) of this act if shipped or sold to, or in the possession of, persons regularly and lawfully engaged in instruction in pharmacy, chemistry, or medicine not involving clinical use, or engaged in law enforcement, or in research not involving clinical use, or in chemical analysis, or physical testing, and is to be used only for such instruction, law enforcement, research, analysis, or testing.

§801.126 Exemptions for cigarettes and smokeless tobacco.

Cigarettes and smokeless tobacco as defined in part 897 of this chapter are exempt from section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act.

[61 FR 44615, Aug. 28, 1996]

§ 801.127 Medical devices; expiration of exemptions.

(a) If a shipment or delivery, or any part thereof, of a device which is exempt under the regulations in this section is made to a person in whose possession the article is not exempt, or is made for any purpose other than those specified, such exemption shall expire, with respect to such shipment or delivery or part thereof, at the beginning of that shipment or delivery. The causing of an exemption to expire shall be considered an act which results in such device being misbranded unless it is disposed of under circumstances in which it ceases to be a drug or device.

(b) The exemptions conferred by §§ 801.119, 801.122, and 801.125 shall continue until the devices are used for the purposes for which they are exempted, or until they are relabeled to comply with section 502(f)(1) of the act. If, however, the device is converted, or manufactured into a form limited to prescription dispensing, no exemption shall thereafter apply to the article unless the device is labeled as required by § 801.109.

Subpart E—Other Exemptions**§ 801.150 Medical devices; processing, labeling, or repacking.**

(a) Except as provided by paragraphs (b) and (c) of this section, a shipment or other delivery of a device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked, in substantial quantity at an establishment other than that where originally processed or packed, shall be exempt, during the time of introduction into and movement in interstate commerce and the time of holding in such establishment, from compliance with the labeling and packaging requirements of section 502(b) and (f) of the act if:

(1) The person who introduced such shipment or delivery into interstate commerce is the operator of the establishment where such device is to be processed, labeled, or repacked; or

(2) In case such person is not such operator, such shipment or delivery is made to such establishment under a written agreement, signed by and containing the post office addresses of

such person and such operator, and containing such specifications for the processing, labeling, or repacking, as the case may be, of such device in such establishment as will insure, if such specifications are followed, that such device will not be adulterated or misbranded within the meaning of the act upon completion of such processing, labeling, or repacking. Such person and such operator shall each keep a copy of such agreement until 2 years after the final shipment or delivery of such device from such establishment, and shall make such copies available for inspection at any reasonable hour to any officer or employee of the Department who requests them.

(b) An exemption of a shipment or other delivery of a device under paragraph (a)(1) of this section shall, at the beginning of the act of removing such shipment or delivery, or any part thereof, from such establishment, become void ab initio if the device comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the act when so removed.

(c) An exemption of a shipment or other delivery of a device under paragraph (a)(2) of this section shall become void ab initio with respect to the person who introduced such shipment or delivery into interstate commerce upon refusal by such person to make available for inspection a copy of the agreement, as required by such paragraph (a)(2).

(d) An exemption of a shipment or other delivery of a device under paragraph (a)(2) of this section shall expire:

(1) At the beginning of the act of removing such shipment or delivery, or any part thereof, from such establishment if the device comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the act when so removed; or

(2) Upon refusal by the operator of the establishment where such device is to be processed, labeled, or repacked, to make available for inspection a copy of the agreement, as required by such clause.

(e) As it is a common industry practice to manufacture and/or assemble, package, and fully label a device as sterile at one establishment and then

ship such device in interstate commerce to another establishment or to a contract sterilizer for sterilization, the Food and Drug Administration will initiate no regulatory action against the device as misbranded or adulterated when the nonsterile device is labeled sterile, provided all the following conditions are met:

(1) There is in effect a written agreement which:

(i) Contains the names and post office addresses of the firms involved and is signed by the person authorizing such shipment and the operator or person in charge of the establishment receiving the devices for sterilization.

(ii) Provides instructions for maintaining proper records or otherwise accounting for the number of units in each shipment to insure that the number of units shipped is the same as the number received and sterilized.

(iii) Acknowledges that the device is nonsterile and is being shipped for further processing, and

(iv) States in detail the sterilization process, the gaseous mixture or other media, the equipment, and the testing method or quality controls to be used by the contract sterilizer to assure that the device will be brought into full compliance with the Federal Food, Drug, and Cosmetic Act.

(2) Each pallet, carton, or other designated unit is conspicuously marked to show its nonsterile nature when it is introduced into and is moving in interstate commerce, and while it is being held prior to sterilization. Following sterilization, and until such time as it is established that the device is sterile and can be released from quarantine, each pallet, carton, or other designated unit is conspicuously marked to show that it has not been released from quarantine, e.g., "sterilized—awaiting test results" or an equivalent designation.

Subparts F–G [Reserved]

Subpart H—Special Requirements for Specific Devices

§ 801.405 Labeling of articles intended for lay use in the repairing and/or refitting of dentures.

(a) The American Dental Association and leading dental authorities have advised the Food and Drug Administration of their concern regarding the safety of denture reliners, repair kits, pads, cushions, and other articles marketed and labeled for lay use in the repairing, refitting, or cushioning of ill-fitting, broken, or irritating dentures. It is the opinion of dental authorities and the Food and Drug Administration that to properly repair and properly refit dentures a person must have professional knowledge and specialized technical skill. Laymen cannot be expected to maintain the original vertical dimension of occlusion and the centric relation essential in the proper repairing or refitting of dentures. The continued wearing of improperly repaired or refitted dentures may cause acceleration of bone resorption, soft tissue hyperplasia, and other irreparable damage to the oral cavity. Such articles designed for lay use should be limited to emergency or temporary situations pending the services of a licensed dentist.

(b) The Food and Drug Administration therefore regards such articles as unsafe and misbranded under the Federal Food, Drug, and Cosmetic Act, unless the labeling:

(1)(i) Limits directions for use for denture repair kits to emergency repairing pending unavoidable delay in obtaining professional reconstruction of the denture;

(ii) Limits directions for use for denture reliners, pads, and cushions to temporary refitting pending unavoidable delay in obtaining professional reconstruction of the denture;

(2) Contains in a conspicuous manner the word "emergency" preceding and

modifying each indication-for-use statement for denture repair kits and the word “temporary” preceding and modifying each indication-for-use statement for reliners, pads, and cushions; and

(3) Includes a conspicuous warning statement to the effect:

(i) For denture repair kits: “*Warning—For emergency repairs only.* Long term use of home-repaired dentures may cause faster bone loss, continuing irritation, sores, and tumors. This kit for emergency use only. See Dentist Without Delay.”

(ii) For denture reliners, pads, and cushions: “*Warning—For temporary use only.* Longterm use of this product may lead to faster bone loss, continuing irritation, sores, and tumors. For Use Only Until a Dentist Can Be Seen.”

(c) Adequate directions for use require full information of the temporary and emergency use recommended in order for the layman to understand the limitations of usefulness, the reasons therefor, and the importance of adhering to the warnings. Accordingly, the labeling should contain substantially the following information:

(1) For denture repair kits: Special training and tools are needed to repair dentures to fit properly. Home-repaired dentures may cause irritation to the gums and discomfort and tiredness while eating. Long term use may lead to more troubles, even permanent changes in bones, teeth, and gums, which may make it impossible to wear dentures in the future. For these reasons, dentures repaired with this kit should be used only in an emergency until a dentist can be seen. Dentures that don't fit properly cause irritation and injury to the gums and faster bone loss, which is permanent. Dentures that don't fit properly cause gum changes that may require surgery for correction. Continuing irritation and injury may lead to cancer in the mouth. You must see your dentist as soon as possible.

(2) For denture reliners, pads, and cushions: Use of these preparations or devices may temporarily decrease the discomfort; however, their use will not make the denture fit properly. Special training and tools are needed to repair a denture to fit properly. Dentures that

do not fit properly cause irritation and injury to the gums and faster bone loss, which is permanent and may require a completely new denture. Changes in the gums caused by dentures that do not fit properly may require surgery for correction. Continuing irritation and injury may lead to cancer in the mouth. You must see your dentist as soon as possible.

(3) If the denture relining or repairing material forms a permanent bond with the denture, a warning statement to the following effect should be included: “This reliner becomes fixed to the denture and a completely new denture may be required because of its use.”

(d) Labeling claims exaggerating the usefulness or the safety of the material or failing to disclose all facts relevant to the claims of usefulness will be regarded as false and misleading under sections 201(n) and 502(a) of the Federal Food, Drug, and Cosmetic Act.

(e) Regulatory action may be initiated with respect to any article found within the jurisdiction of the act contrary to the provisions of this policy statement after 90 days following the date of publication of this section in the FEDERAL REGISTER.

§ 801.410 Use of impact-resistant lenses in eyeglasses and sunglasses.

(a) Examination of data available on the frequency of eye injuries resulting from the shattering of ordinary crown glass lenses indicates that the use of such lenses constitutes an avoidable hazard to the eye of the wearer.

(b) The consensus of the ophthalmic community is that the number of eye injuries would be substantially reduced by the use in eyeglasses and sunglasses of impact-resistant lenses.

(c)(1) To protect the public more adequately from potential eye injury, eyeglasses and sunglasses must be fitted with impact-resistant lenses, except in those cases where the physician or optometrist finds that such lenses will not fulfill the visual requirements of the particular patient, directs in writing the use of other lenses, and gives written notification thereof to the patient.

(2) The physician or optometrist shall have the option of ordering glass

lenses, plastic lenses, or laminated glass lenses made impact resistant by any method; however, all such lenses shall be capable of withstanding the impact test described in paragraph (d)(2) of this section.

(3) Each finished impact-resistant glass lens for prescription use shall be individually tested for impact resistance and shall be capable of withstanding the impact test described in paragraph (d)(2) of this section. Raised multifocal lenses shall be impact resistant but need not be tested beyond initial design testing. Prism segment multifocal, slab-off prism, lenticular cataract, iseikonic, depressed segment one-piece multifocal, bioconcave, myodisc and minus lenticular, custom laminate and cemented assembly lenses shall be impact resistant but need not be subjected to impact testing. To demonstrate that all other types of impact-resistant lenses, including impact-resistant laminated glass lenses (i.e., lenses other than those described in the three preceding sentences of this paragraph (c)(3)), are capable of withstanding the impact test described in this regulation, the manufacturer of these lenses shall subject to an impact test a statistically significant sampling of lenses from each production batch, and the lenses so tested shall be representative of the finished forms as worn by the wearer, including finished forms that are of minimal lens thickness and have been subjected to any treatment used to impart impact resistance. All non-prescription lenses and plastic prescription lenses tested on the basis of statistical significance shall be tested in uncut-finished or finished form.

(d)(1) For the purpose of this regulation, the impact test described in paragraph (d)(2) of this section shall be the "referee test," defined as "one which will be utilized to determine compliance with a regulation." The referee test provides the Food and Drug Administration with the means of examining a medical device for performance and does not inhibit the manufacturer from using equal or superior test methods. A lens manufacturer shall conduct tests of lenses using the impact test described in paragraph (d)(2) of this section or any equal or superior test.

Whatever test is used, the lenses shall be capable of withstanding the impact test described in paragraph (d)(2) of this section if the Food and Drug Administration examines them for performance.

(2) In the impact test, a $\frac{5}{8}$ -inch steel ball weighing approximately 0.56 ounce is dropped from a height of 50 inches upon the horizontal upper surface of the lens. The ball shall strike within a $\frac{5}{8}$ -inch diameter circle located at the geometric center of the lens. The ball may be guided but not restricted in its fall by being dropped through a tube extending to within approximately 4 inches of the lens. To pass the test, the lens must not fracture; for the purpose of this section, a lens will be considered to have fractured if it cracks through its entire thickness, including a laminar layer, if any, and across a complete diameter into two or more separate pieces, or if any lens material visible to the naked eyes becomes detached from the ocular surface. The test shall be conducted with the lens supported by a tube (1-inch inside diameter, $1\frac{1}{4}$ -inch outside diameter, and approximately 1-inch high) affixed to a rigid iron or steel base plate. The total weight of the base plate and its rigidly attached fixtures shall be not less than 27 pounds. For lenses of small minimum diameter, a support tube having an outside diameter of less than $1\frac{1}{4}$ inches may be used. The support tube shall be made of rigid acrylic plastic, steel, or other suitable substance and shall have securely bonded on the top edge a $\frac{1}{8}$ - by $\frac{1}{8}$ -inch neoprene gasket having a hardness of 40 ± 5 , as determined by ASTM Method D 1415-68 "Test for International Hardness of Vulcanized Rubber," a minimum tensile strength of 1,200 pounds, as determined by ASTM Method D 412-68 "Tension Test of Vulcanized Rubber," and a minimum ultimate elongation of 400 percent, as determined by ASTM Method D 412-68 (Both methods are incorporated by reference and are available from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20408). The diameter or contour of the lens support may be

modified as necessary so that the 1/8- by 1/8-inch neoprene gasket supports the lens at its periphery.

(e) Copies of invoice(s), shipping document(s), and records of sale or distribution of all impact resistant lenses, including finished eyeglasses and sunglasses, shall be kept and maintained for a period of 3 years; however, the names and addresses of individuals purchasing nonprescription eyeglasses and sunglasses at the retail level need not be kept and maintained by the retailer. The records kept in compliance with this paragraph shall be made available upon request at all reasonable hours by any officer or employee of the Food and Drug Administration or by any other officer or employee acting on behalf of the Secretary of Health and Human Services and such officer or employee shall be permitted to inspect and copy such records, to make such inventories of stock as he deems necessary, and otherwise to check the correctness of such inventories.

(f) In addition, those persons conducting tests in accordance with paragraph (d) of this section shall maintain the results thereof and a description of the test method and of the test apparatus for a period of 3 years. These records shall be made available upon request at any reasonable hour by any officer or employee acting on behalf of the Secretary of Health and Human Services. The persons conducting tests shall permit the officer or employee to inspect and copy the records, to make such inventories of stock as the officer or employee deems necessary, and otherwise to check the correctness of the inventories.

(g) For the purpose of this section, the term “manufacturer” includes an importer for resale. Such importer may have the tests required by paragraph (d) of this section conducted in the country of origin but must make the results thereof available, upon request, to the Food and Drug Administration, as soon as practicable.

(h) All lenses must be impact-resistant except when the physician or optometrist finds that impact-resistant lenses will not fulfill the visual requirements for a particular patient.

(i) This statement of policy does not apply to contact lenses.

[41 FR 6896, Feb. 13, 1976, as amended at 44 FR 20678, Apr. 6, 1979; 47 FR 9397, Mar. 5, 1982]

§ 801.415 Maximum acceptable level of ozone.

(a) Ozone is a toxic gas with no known useful medical application in specific, adjunctive, or preventive therapy. In order for ozone to be effective as a germicide, it must be present in a concentration far greater than that which can be safely tolerated by man and animals.

(b) Although undesirable physiological effects on the central nervous system, heart, and vision have been reported, the predominant physiological effect of ozone is primary irritation of the mucous membranes. Inhalation of ozone can cause sufficient irritation to the lungs to result in pulmonary edema. The onset of pulmonary edema is usually delayed for some hours after exposure; thus, symptomatic response is not a reliable warning of exposure to toxic concentrations of ozone. Since olfactory fatigue develops readily, the odor of ozone is not a reliable index of atmospheric ozone concentration.

(c) A number of devices currently on the market generate ozone by design or as a byproduct. Since exposure to ozone above a certain concentration can be injurious to health, any such device will be considered adulterated and/or misbranded within the meaning of sections 501 and 502 of the act if it is used or intended for use under the following conditions:

(1) In such a manner that it generates ozone at a level in excess of 0.05 part per million by volume of air circulating through the device or causes an accumulation of ozone in excess of 0.05 part per million by volume of air (when measured under standard conditions at 25 °C (77 °F) and 760 millimeters of mercury) in the atmosphere of enclosed space intended to be occupied by people for extended periods of time, e.g., houses, apartments, hospitals, and offices. This applies to any such device, whether portable or permanent or part of any system, which generates ozone by design or as an inadvertent or incidental product.

(2) To generate ozone and release it into the atmosphere in hospitals or other establishments occupied by the ill or infirm.

(3) To generate ozone and release it into the atmosphere and does not indicate in its labeling the maximum acceptable concentration of ozone which may be generated (not to exceed 0.05 part per million by volume of air circulating through the device) as established herein and the smallest area in which such device can be used so as not to produce an ozone accumulation in excess of 0.05 part per million.

(4) In any medical condition for which there is no proof of safety and effectiveness.

(5) To generate ozone at a level less than 0.05 part per million by volume of air circulating through the device and it is labeled for use as a germicide or deodorizer.

(d) This section does not affect the present threshold limit value of 0.10 part per million (0.2 milligram per cubic meter) of ozone exposure for an 8-hour-day exposure of industrial workers as recommended by the American Conference of Governmental Industrial Hygienists.

(e) The method and apparatus specified in 40 CFR part 50, or any other equally sensitive and accurate method, may be employed in measuring ozone pursuant to this section.

§801.417 Chlorofluorocarbon propellants.

The use of chlorofluorocarbon in devices as propellants in self-pressurized containers is generally prohibited except as provided in §2.125 of this chapter.

[43 FR 11318, Mar. 17, 1978]

§801.420 Hearing aid devices; professional and patient labeling.

(a) *Definitions for the purposes of this section and §801.421.* (1) *Hearing aid* means any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

(2) *Ear specialist* means any licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in

the context of the total health of the patient, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, and otorhinolaryngologists.

(3) *Dispenser* means any person, partnership, corporation, or association engaged in the sale, lease, or rental of hearing aids to any member of the consuming public or any employee, agent, sales person, and/or representative of such a person, partnership, corporation, or association.

(4) *Audiologist* means any person qualified by training and experience to specialize in the evaluation and rehabilitation of individuals whose communication disorders center in whole or in part in the hearing function. In some states audiologists must satisfy specific requirements for licensure.

(5) *Sale or purchase* includes any lease or rental of a hearing aid to a member of the consuming public who is a user or prospective user of a hearing aid.

(6) *Used hearing aid* means any hearing aid that has been worn for any period of time by a user. However, a hearing aid shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing aid evaluation conducted to determine whether to select that particular hearing aid for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing aid health professional selected by the dispenser to assist the buyer in making such a determination.

(b) *Label requirements for hearing aids.* Hearing aids shall be clearly and permanently marked with:

(1) The name of the manufacturer or distributor, the model name or number, the serial number, and the year of manufacture.

(2) A "+" symbol to indicate the positive connection for battery insertion, unless it is physically impossible to insert the battery in the reversed position.

(c) *Labeling requirements for hearing aids*—(1) *General.* All labeling information required by this paragraph shall be included in a User Instructional Brochure that shall be developed by the manufacturer or distributor, shall accompany the hearing aid, and shall

be provided to the prospective user by the dispenser of the hearing aid in accordance with § 801.421(c). The User Instructional Brochure accompanying each hearing aid shall contain the following information and instructions for use, to the extent applicable to the particular requirements and characteristics of the hearing aid:

- (i) An illustration(s) of the hearing aid, indicating operating controls, user adjustments, and battery compartment.
- (ii) Information on the function of all controls intended for user adjustment.
- (iii) A description of any accessory that may accompany the hearing aid, e.g., accessories for use with a television or telephone.
- (iv) Specific instructions for:
 - (a) Use of the hearing aid.
 - (b) Maintenance and care of the hearing aid, including the procedure to follow in washing the earmold, when replacing tubing on those hearing aids that use tubing, and in storing the hearing aid when it will not be used for an extended period of time.
 - (c) Replacing or recharging the batteries, including a generic designation of replacement batteries.
 - (v) Information on how and where to obtain repair service, including at least one specific address where the user can go, or send the hearing aid to, to obtain such repair service.
 - (vi) A description of commonly occurring avoidable conditions that could adversely affect or damage the hearing aid, such as dropping, immersing, or exposing the hearing aid to excessive heat.
 - (vii) Identification of any known side effects associated with the use of a hearing aid that may warrant consultation with a physician, e.g., skin irritation and accelerated accumulation of cerumen (ear wax).
 - (viii) A statement that a hearing aid will not restore normal hearing and will not prevent or improve a hearing impairment resulting from organic conditions.
 - (ix) A statement that in most cases infrequent use of a hearing aid does not permit a user to attain full benefit from it.
 - (x) A statement that the use of a hearing aid is only part of hearing ha-

bilitation and may need to be supplemented by auditory training and instruction in lipreading.

(xi) The warning statement required by paragraph (c)(2) of this section.

(xii) The notice for prospective hearing aid users required by paragraph (c)(3) of this section.

(xiii) The technical data required by paragraph (c)(4) of this section, unless such data is provided in separate labeling accompanying the device.

(2) *Warning statement.* The User Instructional Brochure shall contain the following warning statement:

WARNING TO HEARING AID DISPENSERS

A hearing aid dispenser should advise a prospective hearing aid user to consult promptly with a licensed physician (preferably an ear specialist) before dispensing a hearing aid if the hearing aid dispenser determines through inquiry, actual observation, or review of any other available information concerning the prospective user, that the prospective user has any of the following conditions:

- (i) Visible congenital or traumatic deformity of the ear.
 - (ii) History of active drainage from the ear within the previous 90 days.
 - (iii) History of sudden or rapidly progressive hearing loss within the previous 90 days.
 - (iv) Acute or chronic dizziness.
 - (v) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
 - (vi) Audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz.
 - (vii) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal.
 - (viii) Pain or discomfort in the ear.
- Special care should be exercised in selecting and fitting a hearing aid whose maximum sound pressure level exceeds 132 decibels because there may be risk of impairing the remaining hearing of the hearing aid user. (This provision is required only for those hearing aids with a maximum sound pressure capability greater than 132 decibels (dB).)

(3) *Notice for prospective hearing aid users.* The User Instructional Brochure shall contain the following notice:

IMPORTANT NOTICE FOR PROSPECTIVE HEARING AID USERS

Good health practice requires that a person with a hearing loss have a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. Licensed physicians who specialize in diseases

of the ear are often referred to as otolaryngologists, otologists or otorhinolaryngologists. The purpose of medical evaluation is to assure that all medically treatable conditions that may affect hearing are identified and treated before the hearing aid is purchased.

Following the medical evaluation, the physician will give you a written statement that states that your hearing loss has been medically evaluated and that you may be considered a candidate for a hearing aid. The physician will refer you to an audiologist or a hearing aid dispenser, as appropriate, for a hearing aid evaluation.

The audiologist or hearing aid dispenser will conduct a hearing aid evaluation to assess your ability to hear with and without a hearing aid. The hearing aid evaluation will enable the audiologist or dispenser to select and fit a hearing aid to your individual needs.

If you have reservations about your ability to adapt to amplification, you should inquire about the availability of a trial-rental or purchase-option program. Many hearing aid dispensers now offer programs that permit you to wear a hearing aid for a period of time for a nominal fee after which you may decide if you want to purchase the hearing aid.

Federal law restricts the sale of hearing aids to those individuals who have obtained a medical evaluation from a licensed physician. Federal law permits a fully informed adult to sign a waiver statement declining the medical evaluation for religious or personal beliefs that preclude consultation with a physician. The exercise of such a waiver is not in your best health interest and its use is strongly discouraged.

CHILDREN WITH HEARING LOSS

In addition to seeing a physician for a medical evaluation, a child with a hearing loss should be directed to an audiologist for evaluation and rehabilitation since hearing loss may cause problems in language development and the educational and social growth of a child. An audiologist is qualified by training and experience to assist in the evaluation and rehabilitation of a child with a hearing loss.

(4) *Technical data.* Technical data useful in selecting, fitting, and checking the performance of a hearing aid shall be provided in the User Instructional Brochure or in separate labeling that accompanies the device. The determination of technical data values for the hearing aid labeling shall be conducted in accordance with the test procedures of the American National Standard "Specification of Hearing Aid Characteristics," ANSI S3.22-1987 (ASA

70-1987) (Revision of S3.22-1982), which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the American National Standards Institute, 1430 Broadway, New York, NY 10018, or are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20408. As a minimum, the User Instructional Brochure or such other labeling shall include the appropriate values or information for the following technical data elements as these elements are defined or used in such standard:

- (i) Saturation output curve (SSPL 90 curve).
- (ii) Frequency response curve.
- (iii) Average saturation output (HF-Average SSPL 90).
- (iv) Average full-on gain (HF-Average full-on gain).
- (v) Reference test gain.
- (vi) Frequency range.
- (vii) Total harmonic distortion.
- (viii) Equivalent input noise.
- (ix) Battery current drain.
- (x) Induction coil sensitivity (telephone coil aids only).
- (xi) Input-output curve (ACG aids only).
- (xii) Attack and release times (ACG aids only).

(5) *Statement if hearing aid is used or rebuilt.* If a hearing aid has been used or rebuilt, this fact shall be declared on the container in which the hearing aid is packaged and on a tag that is physically attached to such hearing aid. Such fact may also be stated in the User Instructional Brochure.

(6) *Statements in User Instructional Brochure other than those required.* A User Instructional Brochure may contain statements or illustrations in addition to those required by paragraph (c) of this section if the additional statements:

- (i) Are not false or misleading in any particular, e.g., diminishing the impact of the required statements; and
- (ii) Are not prohibited by this chapter or by regulations of the Federal Trade Commission.

(d) *Submission of all labeling for each type of hearing aid.* Any manufacturer of a hearing aid described in paragraph (a) of this section shall submit to the Food and Drug Administration, Bureau

of Medical Devices and Diagnostic Products, Division of Compliance, HFK-116, 8757 Georgia Ave., Silver Spring, MD 20910, a copy of the User Instructional Brochure described in paragraph (c) of this section and all other labeling for each type of hearing aid on or before August 15, 1977.

[42 FR 9294, Feb. 15, 1977, as amended at 47 FR 9398, Mar. 5, 1982; 50 FR 30154, July 24, 1985; 54 FR 52396, Dec. 21, 1989]

§ 801.421 Hearing aid devices; conditions for sale.

(a) *Medical evaluation requirements—*

(1) *General.* Except as provided in paragraph (a)(2) of this section, a hearing aid dispenser shall not sell a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician that states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding 6 months.

(2) *Waiver to the medical evaluation requirements.* If the prospective hearing aid user is 18 years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement of paragraph (a)(1) of this section provided that the hearing aid dispenser:

(i) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;

(ii) Does not in any way actively encourage the prospective user to waive such a medical evaluation; and

(iii) Affords the prospective user the opportunity to sign the following statement:

I have been advised by _____ (Hearing aid dispenser's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

(b) *Opportunity to review User Instructional Brochure.* Before signing any statement under paragraph (a)(2)(iii) of this section and before the sale of a

hearing aid to a prospective user, the hearing aid dispenser shall:

(1) Provide the prospective user a copy of the User Instructional Brochure for a hearing aid that has been, or may be selected for the prospective user;

(2) Review the content of the User Instructional Brochure with the prospective user orally, or in the predominate method of communication used during the sale;

(3) Afford the prospective user an opportunity to read the User Instructional Brochure.

(c) *Availability of User Instructional Brochure.* (1) Upon request by an individual who is considering purchase of a hearing aid, a dispenser shall, with respect to any hearing aid that he dispenses, provide a copy of the User Instructional Brochure for the hearing aid or the name and address of the manufacturer or distributor from whom a User Instructional Brochure for the hearing aid may be obtained.

(2) In addition to assuring that a User Instructional Brochure accompanies each hearing aid, a manufacturer or distributor shall with respect to any hearing aid that he manufactures or distributes:

(i) Provide sufficient copies of the User Instructional Brochure to sellers for distribution to users and prospective users;

(ii) Provide a copy of the User Instructional Brochure to any hearing aid professional, user, or prospective user who requests a copy in writing.

(d) *Recordkeeping.* The dispenser shall retain for 3 years after the dispensing of a hearing aid a copy of any written statement from a physician required under paragraph (a)(1) of this section or any written statement waiving medical evaluation required under paragraph (a)(2)(iii) of this section.

(e) *Exemption for group auditory trainers.* Group auditory trainers, defined as a group amplification system purchased by a qualified school or institution for the purpose of communicating with and educating individuals with hearing impairments, are exempt from the requirements of this section.

[42 FR 9296, Feb. 15, 1977]

§ 801.430 User labeling for menstrual tampons.

(a) This section applies to scented or scented deodorized menstrual tampons as identified in § 884.5460 and unscented menstrual tampons as identified in § 884.5470 of this chapter.

(b) Data show that toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, is associated with the use of menstrual tampons. To protect the public and to minimize the serious adverse effects of TSS, menstrual tampons shall be labeled as set forth in paragraphs (c), (d), and (e) of this section and tested for absorbency as set forth in paragraph (f) of this section.

(c) If the information specified in paragraph (d) of this section is to be included as a package insert, the following alert statement shall appear prominently and legibly on the package label:

ATTENTION: Tampons are associated with Toxic Shock Syndrome (TSS). TSS is a rare but serious disease that may cause death. Read and save the enclosed information.

(d) The labeling of menstrual tampons shall contain the following consumer information prominently and legibly, in such terms as to render the information likely to be read and understood by the ordinary individual under customary conditions of purchase and use:

(1)(i) Warning signs of TSS, e.g., sudden fever (usually 102° or more) and vomiting, diarrhea, fainting or near fainting when standing up, dizziness, or a rash that looks like a sunburn;

(ii) What to do if these or other signs of TSS appear, including the need to remove the tampon at once and seek medical attention immediately;

(2) The risk of TSS to all women using tampons during their menstrual period, especially the reported higher risks to women under 30 years of age and teenage girls, the estimated incidence of TSS of 1 to 17 per 100,000 menstruating women and girls per year, and the risk of death from contracting TSS;

(3) The advisability of using tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS;

(4) Avoiding the risk of getting tampon-associated TSS by not using tampons, and reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods; and

(5) The need to seek medical attention before again using tampons if TSS warning signs have occurred in the past, or if women have any questions about TSS or tampon use.

(e) The statements required by paragraph (e) of this section shall be prominently and legibly placed on the package label of menstrual tampons in conformance with section 502(c) of the Federal Food, Drug, and Cosmetic Act (the act) (unless the menstrual tampons are exempt under paragraph (g) of this section).

(1) Menstrual tampon package labels shall bear one of the following absorbency terms representing the absorbency of the production run, lot, or batch as measured by the test described in paragraph (f)(2) of this section;

Ranges of absorbency in grams ¹	Corresponding term of absorbency
6 and under	Junior absorbency.
6 to 9	Regular absorbency.
9 to 12	Super absorbency.
12 to 15	Super plus absorbency.
15 to 18	None.
above 18	None.

¹ These ranges are defined, respectively, as follows: less than or equal to 6 grams; greater than 6 grams up to and including 9 grams; greater than 9 grams up to and including 12 grams; greater than 12 grams up to and including 15 grams; greater than 15 grams up to and including 18 grams; and greater than 18 grams.

(2) The package label shall include an explanation of the ranges of absorbency and a description of how consumers can use a range of absorbency, and its corresponding absorbency term, to make comparisons of absorbency of tampons to allow selection of the tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

(f) A manufacturer shall measure the absorbency of individual tampons using the test method specified in paragraph (f)(2) of this section and calculate the mean absorbency of a production run, lot, or batch by rounding to the nearest 0.1 gram.

(1) A manufacturer shall design and implement a sampling plan that includes collection of probability samples of adequate size to yield consistent tolerance intervals such that the probability is 90 percent that at least 90 percent of the absorbencies of individual tampons within a brand and type are within the range of absorbency stated on the package label.

(2) In the absorbency test, an unlubricated condom, with tensile strength between 17 Mega Pascals (MPa) and 30 MPa, as measured according to the procedure in the American Society for Testing and Materials (ASTM), D 3492-83, "Standard Specification for Rubber Contraceptives (Condoms)"¹ for determining tensile strength, which is incorporated by reference in accordance with 5 U.S.C. 552(a), is attached to the large end of a glass chamber (or a chamber made from hard transparent plastic) with a rubber band (see figure 1) and pushed through the small end of the chamber using a smooth, finished rod. The condom is pulled through until all slack is removed. The tip of the condom is cut off and the remaining end of the condom is stretched over the end of the tube and secured with a rubber band. A preweighed (to the nearest

0.01 gram) tampon is placed within the condom membrane so that the center of gravity of the tampon is at the center of the chamber. An infusion needle (14 gauge) is inserted through the septum created by the condom tip until it contacts the end of the tampon. The outer chamber is filled with water pumped from a temperature-controlled waterbath to maintain the average temperature at 27 ± 1 °C. The water returns to the waterbath as shown in figure 2. Syngyna fluid (10 grams sodium chloride, 0.5 gram Certified Reagent Acid Fushsin, 1,000 milliliters distilled water) is then pumped through the infusion needle at a rate of 50 milliliters per hour. The test shall be terminated when the tampon is saturated and the first drop of fluid exits the apparatus. (The test result shall be discarded if fluid is detected in the folds of the condom before the tampon is saturated). The water is then drained and the tampon is removed and immediately weighed to the nearest 0.01 gram. The absorbency of the tampon is determined by subtracting its dry weight from this value. The condom shall be replaced after 10 tests or at the end of the day during which the condom is used in testing, whichever occurs first.

¹Copies of the standard are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103,

or available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

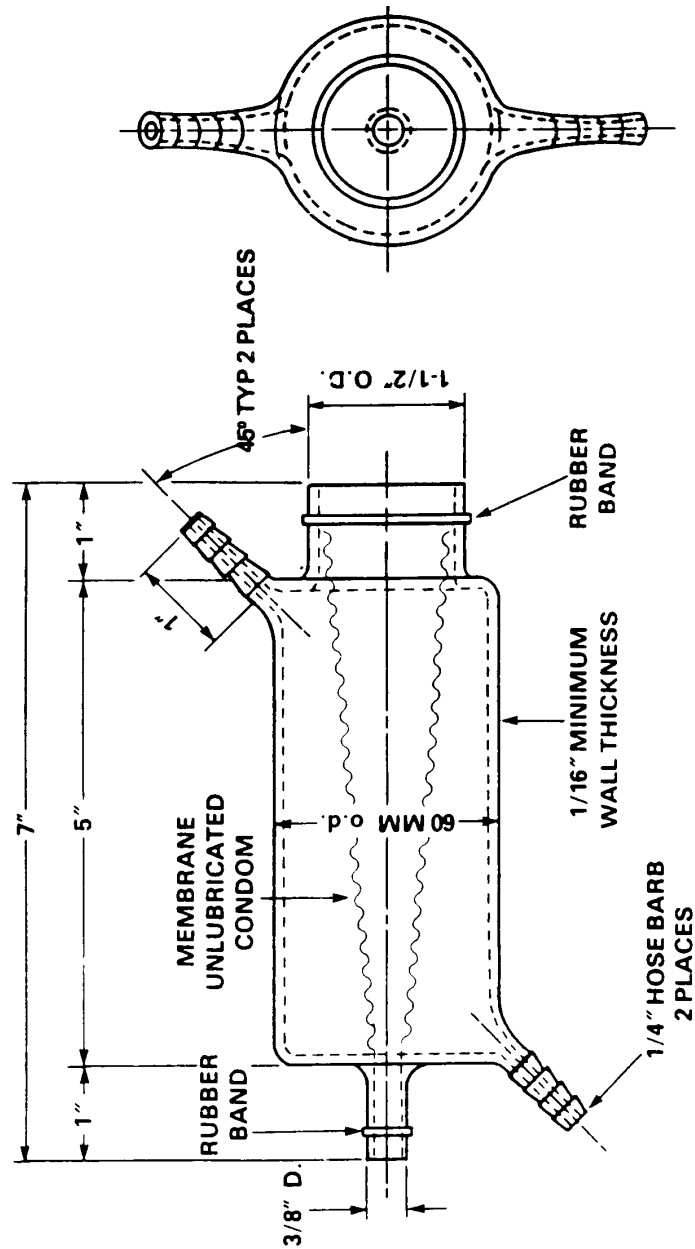


FIGURE 1 – SYNGYNA TEST CHAMBER

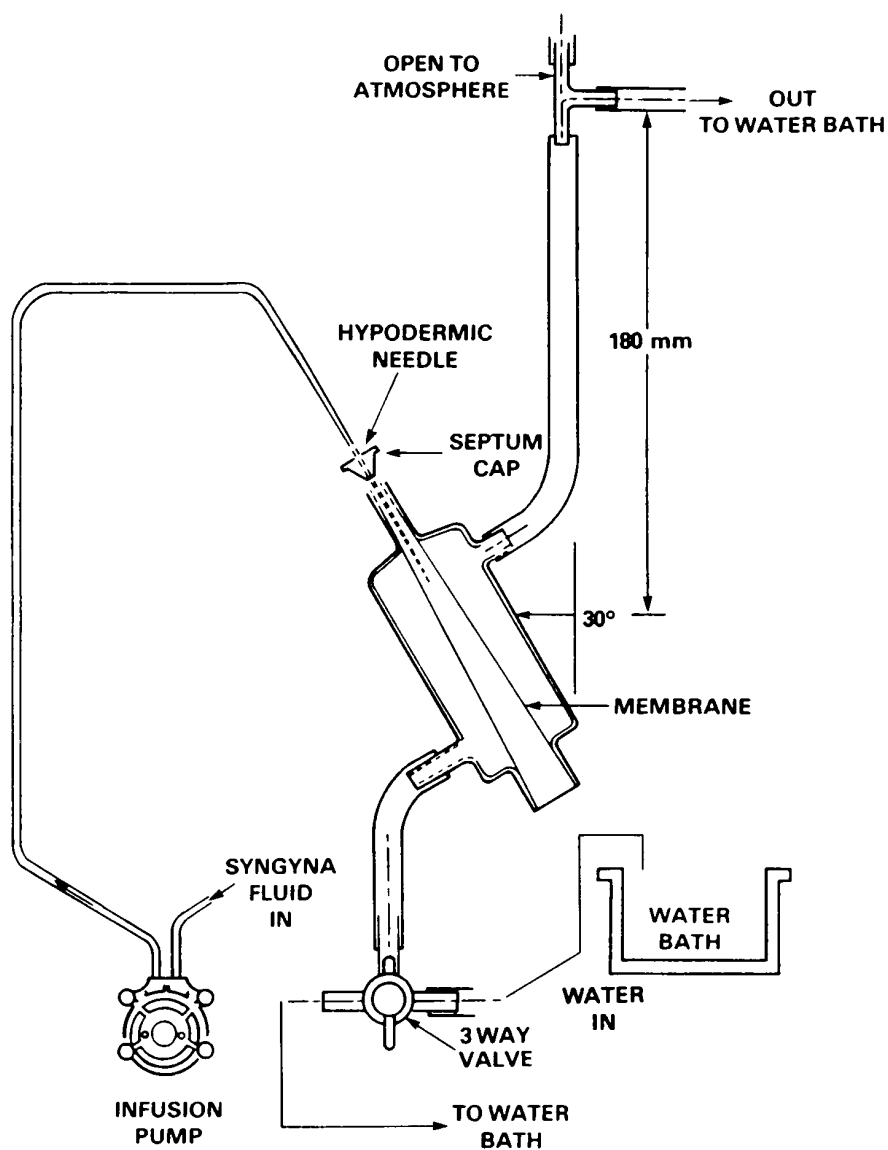


FIGURE 2—SYNGYNA TEST SET-UP

(3) The Food and Drug Administration may permit the use of an absorbency test method different from the

test method specified in this section if each of the following conditions is met:

(i) The manufacturer presents evidence, in the form of a citizen petition

submitted in accordance with the requirements of §10.30 of this chapter, demonstrating that the alternative test method will yield results that are equivalent to the results yielded by the test method specified in this section; and

(ii) FDA approves the method and has published notice of its approval of the alternative test method in the FEDERAL REGISTER.

(g) Any menstrual tampon intended to be dispensed by a vending machine is exempt from the requirements of this section.

(h) Any menstrual tampon that is not labeled as required by paragraphs (c), (d), and (e) of this section and that is initially introduced or initially delivered for introduction into commerce after March 1, 1990, is misbranded under sections 201(n), 502 (a) and (f) of the act.

(Information collection requirements contained in paragraphs (e) and (f) were approved by the Office of Management and Budget under control number 0910-0257)

[47 FR 26989, June 22, 1982, as amended at 54 FR 43771, Oct. 26, 1989; 55 FR 17600, Apr. 26, 1990]

§801.433 Warning statements for prescription and restricted device products containing or manufactured with chlorofluorocarbons or other ozone-depleting substances.

(a)(1) All prescription and restricted device products containing or manufactured with chlorofluorocarbons, halons, carbon tetrachloride, methyl chloride, or any other class I substance designated by the Environmental Protection Agency (EPA) shall, except as provided in paragraph (b) of this section, bear the following warning statement:

WARNING: Contains [or Manufactured with, if applicable] *[insert name of substance]*, a substance which harms public health and environment by destroying ozone in the upper atmosphere.

(2) The warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling in accordance with the requirements of 40 CFR part 82 and appear with such prominence and conspicuousness as to render it likely to be read and under-

stood by consumers under normal conditions of purchase.

(b)(1) For prescription and restricted device products, the following alternative warning statement may be used:

NOTE: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or name of other class I substance, if applicable]:

This product contains [or is manufactured with, if applicable] *[insert name of substance]*, a substance which harms the environment by destroying ozone in the upper atmosphere.

Your physician has determined that this product is likely to help your personal health. USE THIS PRODUCT AS DIRECTED, UNLESS INSTRUCTED TO DO OTHERWISE BY YOUR PHYSICIAN. If you have any questions about alternatives, consult with your physician.

(2) The warning statement shall be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling in accordance with the requirements of 40 CFR part 82 and appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase.

(3) If the warning statement in paragraph (b)(1) of this section is used, the following warning statement must be placed on the package labeling intended to be read by the physician (physician package insert) after the "How supplied" section, which describes special handling and storage conditions on the physician labeling:

NOTE: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or name of other class I substance, if applicable]:

WARNING: Contains [or Manufactured with, if applicable] *[insert name of substance]*, a substance which harms public health and environment by destroying ozone in the upper atmosphere.

A notice similar to the above WARNING has been placed in the information for the patient [or patient information leaflet, if applicable] of this product under Environmental Protection Agency (EPA) regulations. The patient's warning states that the patient should consult his or her physician if there are questions about alternatives.

(c) This section does not replace or relieve a person from any requirements imposed under 40 CFR part 82.

[61 FR 20101, May 3, 1996]

§ 801.435 User labeling for latex condoms.

(a) This section applies to the subset of condoms as identified in § 884.5300 of this chapter, and condoms with spermicidal lubricant as identified in § 884.5310 of this chapter, which products are formed from latex films.

(b) Data show that the material integrity of latex condoms degrade over time. To protect the public health and minimize the risk of device failure, latex condoms must bear an expiration date which is supported by testing as described in paragraphs (d) and (h) of this section.

(c) The expiration date, as demonstrated by testing procedures required by paragraphs (d) and (h) of this section, must be displayed prominently and legibly on the primary packaging (i.e., individual package), and higher levels of packaging (e.g., boxes of condoms), in order to ensure visibility of the expiration date by consumers.

(d) Except as provided under paragraph (f) of this section, the expiration date must be supported by data demonstrating physical and mechanical integrity of the product after three discrete and representative lots of the product have been subjected to each of the following conditions:

(1) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at 70 °C (plus or minus 2 °C) for 7 days;

(2) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at a selected temperature between 40 and 50 °C (plus or minus 2 °C) for 90 days; and

(3) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at a monitored or controlled temperature between 15 and 30 °C for the lifetime of the product (real time storage).

(e) If a product fails the physical and mechanical integrity tests commonly used by industry after the completion of the accelerated storage tests described in paragraphs (d)(1) and (d)(2) of this section, the product expiration date must be demonstrated by real time storage conditions described in paragraph (d)(3) of this section. If all of the products tested after storage at temperatures as described in paragraphs (d)(1) and (d)(2) of this section pass the manufacturer's physical and mechanical integrity tests, the manufacturer may label the product with an expiration date of up to 5 years from the date of product packaging. If the extrapolated expiration date under paragraphs (d)(1) and (d)(2) of this section is used, the labeled expiration date must be confirmed by physical and mechanical integrity tests performed at the end of the stated expiration period as described in paragraph (d)(3) of this section. If the data from tests following real time storage described in paragraph (d)(3) of this section fails to confirm the extrapolated expiration date, the manufacturer must, at that time, relabel the product to reflect the actual shelf life.

(f) Products that already have established shelf life data based upon real time storage and testing and have such storage and testing data available for inspection are not required to confirm such data using accelerated and intermediate aging data described in paragraphs (d)(1) and (d)(2) of this section. If, however, such real time expiration dates were based upon testing of products that were not first left unpackaged for the maximum amount of time as described in paragraph (d)(3) of this section, the real time testing must be confirmed by testing products consistent with the requirements of paragraph (d)(3) of this section. This testing shall be initiated no later than the effective date of this regulation. Until the confirmation testing in accordance with paragraph (d)(3) of this section is completed, the product may remain on the market labeled with the expiration date based upon previous real time testing.

(g) If a manufacturer uses testing data from one product to support expiration dating on any variation of that

product, the manufacturer must document and provide, upon request, an appropriate justification for the application of the testing data to the variation of the tested product.

(h) If a latex condom contains a spermicide, and the expiration date based on spermicidal stability testing is different from the expiration date based upon latex integrity testing, the product shall bear only the earlier expiration date.

(i) The time period upon which the expiration date is based shall start with the date of packaging.

(j) As provided in part 820 of this chapter, all testing data must be retained in each company's files, and shall be made available upon request for inspection by the Food and Drug Administration.

(k) Any latex condom not labeled with an expiration date as required by paragraph (c) of this section, and initially delivered for introduction into interstate commerce after the effective date of this regulation is misbranded under sections 201(n) and 502(a) and (f) of Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(n) and 352(a) and (f)).

[62 FR 50501, Sept. 26, 1997]

§ 801.437 User labeling for devices that contain natural rubber.

(a) Data in the Medical Device Reporting System and the scientific literature indicate that some individuals are at risk of severe anaphylactic reactions to natural latex proteins. This labeling regulation is intended to minimize the risk to individuals sensitive to natural latex proteins and protect the public health.

(b) This section applies to all devices composed of or containing, or having packaging or components that are composed of, or contain, natural rubber that contacts humans. The term "natural rubber" includes natural rubber latex, dry natural rubber, and synthetic latex or synthetic rubber that contains natural rubber in its formulation.

(1) The term "natural rubber latex" means rubber that is produced by the natural rubber latex process that involves the use of natural latex in a concentrated colloidal suspension. Products

are formed from natural rubber latex by dipping, extruding, or coating.

(2) The term "dry natural rubber" means rubber that is produced by the dry natural rubber process that involves the use of coagulated natural latex in the form of dried or milled sheets. Products are formed from dry natural rubber by compression molding, extrusion, or by converting the sheets into a solution for dipping.

(3) The term "contacts humans" means that the natural rubber contained in a device is intended to contact or is likely to contact the user or patient. This includes contact when the device that contains natural rubber is connected to the patient by a liquid path or an enclosed gas path; or the device containing the natural rubber is fully or partially coated with a powder, and such powder may carry natural rubber proteins that may contaminate the environment of the user or patient.

(c) Devices containing natural rubber shall be labeled as set forth in paragraphs (d) through (h) of this section. Each required labeling statement shall be prominently and legibly displayed in conformance with section 502(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(c)).

(d) Devices containing natural rubber latex that contacts humans, as described in paragraph (b) of this section, shall bear the following statement in bold print on the device labeling:

"Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions."

This statement shall appear on all device labels, and other labeling, and shall appear on the principal display panel of the device packaging, the outside package, container or wrapper, and the immediate device package, container, or wrapper.

(e) Devices containing dry natural rubber that contacts humans, as described in paragraph (b) of this section, that are not already subject to paragraph (d) of this section, shall bear the following statement in bold print on the device labeling:

"This Product Contains Dry Natural Rubber."

This statement shall appear on all device labels, and other labeling, and shall appear on the principal display

panel of the device packaging, the outside package, container or wrapper, and the immediate device package, container, or wrapper.

(f) Devices that have packaging containing natural rubber latex that contacts humans, as described in paragraph (b) of this section, shall bear the following statement in bold print on the device labeling:

“Caution: The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.”

This statement shall appear on the packaging that contains the natural rubber, and the outside package, container, or wrapper.

(g) Devices that have packaging containing dry natural rubber that contacts humans, as described in paragraph (b) of this section, shall bear the following statement in bold print on the device labeling:

“The Packaging of This Product Contains Dry Natural Rubber.”

This statement shall appear on the packaging that contains the natural rubber, and the outside package, container, or wrapper.

(h) Devices that contain natural rubber that contacts humans, as described in paragraph (b) of this section, shall not contain the term “hypoallergenic” on their labeling.

(i) Any affected person may request an exemption or variance from the requirements of this section by submitting a citizen petition in accordance with §10.30 of this chapter.

(j) Any device subject to this section that is not labeled in accordance with paragraphs (d) through (h) of this section and that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this regulation is misbranded under sections 201(n) and 502(a), (c), and (f) of the act (21 U.S.C. 321(n) and 352(a), (c), and (f)).

[62 FR 51029, Sept. 30, 1997]

EFFECTIVE DATE NOTE: At 62 FR 51029, Sept. 30, 1997, §801.437 was added to subpart H, effective Sept. 30, 1998.

PART 803—MEDICAL DEVICE REPORTING

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AUTHORITY: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

SOURCE: 60 FR 63597, Dec. 11, 1995, unless otherwise noted.

Subpart A—General Provisions

§803.1 Scope.

(a) This part establishes requirements for medical device reporting.